

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rolando Vasquez	Team: Squad #8	CCRB Case #: 201505716	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 07/11/2015 8:55 PM	Location of Incident: § 87(2)(b)	Precinct: 90	18 Mo. SOL 1/11/2017	EO SOL 1/11/2017	
Date/Time CV Reported Mon, 07/13/2015 12:48 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 07/13/2015 12:48 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Charles Senat	00520	933345	090 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Manuel Cantoralonso	11751	945155	090 PCT
2. POM Stephen Sheppard	13816	945001	090 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Charles Senat	Abuse: Sgt. Charles Senat searched § 87(2)(b) in § 87(2)(b) Brooklyn.	§ 87(2)(b)

Case Summary

This complaint was filed by § 87(2)(b) on July 13, 2015 with the CCRB via phone. § 87(2)(b) is a non-witnessing complainant.

On July 11, 2015, § 87(2)(b) was at the bodega at § 87(2)(b) in Brooklyn at approximately 8:55 p.m. § 87(2)(b) is a friend of § 87(2)(b) who is the owner of the bodega. Sgt. Charles Senat, PO Manuel Cantoralonso, and PO Stephen Sheppard arrived at the bodega and told § 87(2)(b) and his friend, § 87(2)(b) to leave the store. The store clerk, § 87(2)(b) remained inside the store. § 87(2)(b) informed § 87(2)(b) that Sgt. Senat and PO Cantoralonso were searching various places inside the store, including the basement, behind the cash counter, and inside the cash register (**Allegation A**). No summonses were issued and nobody was arrested during this incident.

§ 87(2)(b) and § 87(2)(b) both accepted mediation and the case was forwarded to the mediation unit on August 17, 2015 after the identity of the officers was confirmed. The officers rejected mediation and the case was returned to the investigation unit on October 8, 2015. § 87(2)(b) was identified as a witness to this incident. § 87(2)(b)

A phone interview with § 87(2)(b) was arranged and conducted on January 5, 2016.

This case was originally assigned to Investigator Leanne Fornelli and was reassigned to the undersigned on July 20, 2015.

Mediation, Civil and Criminal Histories

- The complainants in this case, § 87(2)(b) and § 87(2)(b) both accepted mediation. This case was sent to mediation on August 17, 2015 and was returned for investigation on October 8, 2015 after the subject officers rejected mediation.
- § 87(2)(b) and § 87(2)(b) do not have a history of any arrests in New York City in the last 10 years.
- The NYC Office of the Comptroller responded to a request noting that neither § 87(2)(b) nor § 87(2)(b) have filed a notice of claim regarding this incident (Board Review 01).

Civilian and Officer CCRB Histories

- This is the first complaint filed by § 87(2)(b) and § 87(2)(b) at the CCRB (Board Review 02, Board Review 03).
- Sgt. Senat has been a member of the service for 12 years and has no substantiated allegations. Sgt. Senat has one prior allegation for premises entered/searched which was exonerated (Board Review 04).

Findings and Recommendations

Potential Issues

- § 87(2)(b) an employee of the bodega, was the only civilian inside when the location was searched. § 87(2)(b) informed § 87(2)(b) of what he had seen after the incident occurred. § 87(2)(b) could not be reached to provide a statement. § 87(2)(b)

§ 87(2)(b) § 87(2)(b) and § 87(2)(b) did not have any contact information for § 87(2)(b). A request to ITSD for any warrant check conducted on § 87(2)(b) on the incident date yielded negative results.

Allegation A – Abuse of Authority: Sgt. Charles Senat searched § 87(2)(b) in Brooklyn.

§ 87(2)(b) testified that he was drinking beer and watching a soccer game at the bodega with his friend, § 87(2)(b) (Board Review 05). § 87(2)(b) and § 87(2)(b) do not work at the bodega. § 87(2)(b) an employee of the bodega, was also present and was making a sandwich for a customer. Sgt. Senat, PO Cantoralonso, and PO Sheppard came inside the bodega. Sgt. Senat asked if he could use the bathroom. § 87(2)(b) told Sgt. Senat where the bathroom was and told him he could use it. Sgt. Senat went toward the bathroom, followed by PO Cantoralonso. PO Cantoralonso attempted to open a door that leads to the basement. § 87(2)(b) § 87(2)(b) tried to stop PO Cantoralonso from going downstairs and was told to go outside with § 87(2)(b). PO Sheppard went outside with § 87(2)(b) and § 87(2)(b). § 87(2)(b) remained inside the store. After the interaction ended, § 87(2)(b) told § 87(2)(b) about what happened inside the store. § 87(2)(b) remained seated in a chair while Sgt. Senat and PO Cantoralonso searched the basement, behind the counter, and inside the cash register. § 87(2)(b) § 87(2)(b) was also watching what was happening inside the store through the window from across the street. When the officers left the bodega, § 87(2)(b) went to the basement and observed boxes that had been scattered all over the place. § 87(2)(b) denied that the bodega deals with drugs.

§ 87(2)(b), § 87(2)(f)
§ 87(2)(b)
§ 87(2)(b)
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§ 87(2)(b)
A statement was obtained from § 87(2)(b) on January 5, 2016 over the phone (Board Review 14). § 87(2)(b), § 87(2)(f)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

§ 87(2)(b) did not know how he would have been identified as a witness in this case and expressed confusion about how his name became associated with the incident.

§ 87(2)(e), § 87(2)(f)
§ 87(2)(b)
§ 87(2)(b)
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§ 87(2)(b)

§ 87(2)(b) Sgt. Senat made the determination to go to the bodega to conduct a business inspection check and to look for the drugs and firearm.

Sgt. Senat testified that officers do not need any specific reason to conduct a business inspection because bodegas that sell alcohol are licensed by the Store and Liquor Authority and are subject to unannounced inspections. During a business inspection, officers have the authority to look anywhere inside a business, including closed compartments such as boxes and cash registers. Officers have the authority to look in areas that are not accessible to the public if they are storage areas for alcohol.

Sgt. Senat testified that upon arrival at the bodega, he found that the store clerk did not speak English. Sgt. Senat instructed PO Cantoralonso to ask the store clerk to step out from behind the counter and to explain to the store clerk that the officers were conducting a business inspection check. Sgt. Senat also asked PO Cantoralonso to convey to the store clerk that he knew about the bodega's drug history. The store clerk provided the bodega's paperwork and everything appeared in order to Sgt. Senat. Two men who had been drinking alcohol in the back of the store were told by PO Cantoralonso that they could not be drinking at the bodega. Nothing about any of the civilians inside the bodega raised Sgt. Senat's suspicions. Sgt. Senat looked behind the main counter. Sgt. Senat saw various types of food § 87(2)(e), § 87(2)(f)

§ 87(2)(e), § 87(2)(f) Sgt. Senat looked in the back of the store § 87(2)(e), § 87(2)(f)
§ 87(2)(e), § 87(2)(f) The box was open and Sgt. Senat looked inside. There was no gun in the box. Sgt. Senat also looked in a separate room where alcohol bottles are stored. Sgt. Senat did not find any drugs or weapons in this room. Sgt. Senat did not remember going into any downstairs area of the store, though he knew that a downstairs area existed because he saw an open door with stairs that led downstairs. Sgt. Senat did not remember PO Cantoralonso or PO Sheppard going into any downstairs area of the store. After the inspection was conducted, the civilians were warned and admonished about drinking alcohol in the store. § 87(2)(e), § 87(2)(f)

PO Cantoralonso testified that that he was on patrol with Sgt. Senat (Board Review 07). The vicinity of § 87(2)(b) is a drug prone area. PO Cantoralonso remembered one prior drug arrest at the bodega. § 87(2)(e), § 87(2)(f)

§ 87(2)(b) Sgt. Senat made the determination to conduct a business inspection at the bodega. Upon arrival, PO Cantoralonso saw two men in the back of the store drinking beer. Nothing about either of the two men raised PO Cantoralonso's suspicions or made him feel unsafe. The two men were told that they were not allowed to be drinking in the store. The two men left the store. When § 87(2)(b) the store clerk, was done assisting a customer, PO Cantoralonso said to him in Spanish, "We're just doing a business inspection. We're not here to hurt the business or nothing like that." PO Cantoralonso also pointed out to § 87(2)(b) that he saw a beer bottle behind the counter where he had been standing. § 87(2)(b) acknowledged that he had been drinking as well. While he was talking with § 87(2)(b) in the front of the bodega, Sgt. Senat had begun the inspection of the store. Sgt. Senat looked behind the counter in an area where cigarettes are stored. Sgt. Senat looked around the cash register but did not open the register. § 87(2)(e), § 87(2)(f)

§ 87(2)(b) There were many boxes in the store. PO Cantoralonso looked in boxes that were next to the entrance, next to stairs that led to a downstairs area in the

back of the store, and in the back of the store near the bathroom. No drugs or weapons were discovered. The officers left the bodega.

PO Sheppard testified that he was on patrol with Sgt. Senat and PO Cantoralonso in their vehicle (Board Review 08) § 87(2)(e), § 87(2)(f)

§ 87(2)(e), § 87(2)(f) Sgt. Senat told PO Sheppard that they were going around the corner to a bodega to conduct a business inspection. § 87(2)(e), § 87(2)(f)

At the bodega, two men were observed drinking in the back of the store and were asked to leave. PO Cantoralonso spoke with the store clerk in Spanish. PO Sheppard did not know much of the conversation between the store clerk and PO Cantoralonso because he does not speak Spanish. Sgt. Senat and PO Cantoralonso conducted the business inspection check while PO Sheppard stood in the front of the bodega with the store clerk. PO Cantoralonso went behind the counter and looked on shelves where cigarettes are stored. An officer had looked inside the refrigerator. PO Sheppard did not see much of where Sgt. Senat and PO Cantoralonso inspected because his view was obstructed by shelves and aisles in the store. The store clerk was warned and admonished and the officers left the store.

In People v. Scott, 79 NY 2d 474 (1992) it was ruled that the “administrative search” exception to the Fourth Amendment’s probable cause and warrant requirements cannot be invoked where a search is undertaken solely to uncover evidence of criminality (Board Review 09).

In People v. Remo, 98 AD 2d 843 (1983) it was established that a warrantless search of a business may be “conducted upon the voluntary consent of a third person with authorized access to the area to be searched or who reasonably appears to have the requisite degree of authorized access” (Board Review 10).

People v. Dallas, 8 NY 3d 890 (2007) establishes three criteria that must be met in order to invoke the emergency exception to the warrant requirement (Board Review 11). The second criteria, which is applicable to this case, says “the search must not be primarily motivated by intent to arrest and seize evidence.”

People v. Bigelow, 66 NY 2d 417 (1985) states that warrantless searches based on hearsay statements are permissible but “the police must establish that the informant had some basis for the knowledge he transmitted and that he was reliable” (Board Review 12). The police can also establish this basis of knowledge themselves if they “observe conduct suggestive of, or indirectly involving, criminal activity about which an informant provided minutely detailed information to the police.”

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Squad: 8

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date